



## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**[OMHA-1601-N]**

### **Medicare Program; Administrative Law Judge Hearing Program for Medicare Claim and Entitlement Appeals; Quarterly Listing of Program Issuances—March Through June 2016**

**AGENCY:** Office of Medicare Hearings and Appeals (OMHA), HHS.

**ACTION:** Notice.

**SUMMARY:** This quarterly notice lists the OMHA Case Processing Manual (OCPM) manual instructions that were published from March through June, 2016. This manual standardizes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations and OMHA directives, and gives OMHA staff direction for processing appeals at the OMHA level of adjudication.

**FOR FURTHER INFORMATION CONTACT:** Amanda Axeen, by telephone at (571) 777-2705, or by e-mail at [amanda.axeen@hhs.gov](mailto:amanda.axeen@hhs.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

The Office of Medicare Hearings and Appeals (OMHA), a staff division within the Office of the Secretary of the U.S. Department of Health and Human Services (HHS), administers the nationwide Administrative Law Judge hearing program for Medicare claim, organization and coverage determination, and entitlement appeals under sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D-4(h) of the Social Security Act (the Act). OMHA ensures that Medicare beneficiaries and the providers and suppliers that furnish items or services to Medicare beneficiaries, as well as Medicare Advantage Organizations (MAOs), Medicaid State Agencies, and applicable plans have a fair and impartial forum to address disagreements with Medicare

coverage and payment determinations made by Medicare contractors, MAOs, or Part D Plan Sponsors (PDPs), and determinations related to Medicare eligibility and entitlement, Part B late enrollment penalty, and income-related monthly adjustment amounts (IRMAA) made by the Social Security Administration (SSA).

The Medicare claim, organization and coverage determination appeals processes consist of four levels of administrative review, and a fifth level of review with the Federal district courts after administrative remedies under HHS regulations have been exhausted. The first two levels of review are administered by the Centers for Medicare & Medicaid Services (CMS) and conducted by Medicare contractors for claim appeals, by MAOs and an independent review entity for Part C organization determination appeals, or by PDPs and an independent review entity for Part D coverage determination appeals. The third level of review is administered by OMHA and conducted by Administrative Law Judges. The fourth level of review is administered by the HHS Departmental Appeals Board (DAB) and conducted by the Medicare Appeals Council. In addition, OMHA and the DAB administer the second and third levels of appeal, respectively, for Medicare eligibility, entitlement, Part B late enrollment penalty, and IRMAA reconsiderations made by SSA; a fourth level of review with the Federal district courts is available after administrative remedies within SSA and HHS have been exhausted.

Sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D-4(h) of the Act are implemented through the regulations at 42 CFR part 405 subparts I and J; part 417, subpart Q; part 422, subpart M; part 423, subparts M and U; and part 478, subpart B. As noted above, OMHA administers the nationwide Administrative Law Judge hearing program in accordance with these statutes and applicable regulations. As part of that effort, OMHA is establishing a manual, the OMHA Case Processing Manual (OCPM). Through the OCPM, the OMHA Chief

Administrative Law Judge establishes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations and OMHA directives. The OCPM provides direction for processing appeals at the OMHA level of adjudication for Medicare Part A and B claims; Part C organization determinations; Part D coverage determinations; and SSA eligibility and entitlement, Part B late enrollment penalty, and IRMAA determinations.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

## **II. Format for the Quarterly Issuance Notices**

This quarterly notice provides the specific updates to the OCPM that have occurred in the 3-month period. A hyperlink to the available chapters on the OMHA website is provided below. The OMHA website contains the most current, up-to-date chapters and revisions to chapters, and will be available earlier than we publish our quarterly notice. We believe the OMHA website list provides more timely access to the current OCPM chapters for those involved in the Medicare claim, organization and coverage determination and entitlement appeals processes. We also believe the website offers the public a more convenient tool for real time access to current OCPM provisions. In addition, OMHA has a listserv to which the public can subscribe to receive immediate notification of any updates to the OMHA website. This listserv avoids the need to check the OMHA website, as update notifications are sent to subscribers as they occur. If accessing the OMHA website proves to be difficult, the contact person listed above can provide the information.

## **III. How to Use the Notice**

This notice lists the OCPM chapters and subjects published during the quarter covered by the notice so the reader may determine whether any are of particular interest. We expect this notice to be used in concert with future published notices. The OCPM can be accessed at

*[http://www.hhs.gov/omha/OMHA\\_Case\\_Processing\\_Manual/index.html](http://www.hhs.gov/omha/OMHA_Case_Processing_Manual/index.html).*

#### **IV. OCPM Releases for March Through June 2016**

The OCPM is used by OMHA adjudicators and staff to administer the OMHA program. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, and OMHA directives.

The following is a list and description of new OCPM provisions and the subject matter. For future quarterly notices, we will list only the specific updates to the list of manual provisions that have occurred in the covered 3-month period. This information is available on our website at

*[http://www.hhs.gov/omha/OMHA\\_Case\\_Processing\\_Manual/index.html](http://www.hhs.gov/omha/OMHA_Case_Processing_Manual/index.html).*

##### *OCPM Division II: Part A/B Claim Determinations*

*Chapter 6, Pre-Hearing Case Development.* This new chapter describes the pre-hearing case development process for requests for hearing on Medicare Part A and Part B reconsiderations issued by Qualified Independent Contractors (QICs) and Quality Improvement Organizations (QIOs), and escalations of requests for reconsideration by a QIC. The pre-hearing case development process helps identify and address evidentiary issues prior to the hearing to avoid delays and helps to ensure legal requirements related to new evidence are observed. The process also assists staff in determining whether a hearing is necessary for a given case. In addition, the process guides OMHA staff on processes available to facilitate the hearing process, such as identifying special needs for hearing participants, discovery, using experts, and conducting pre-hearing conferences.

Dated: July 15, 2016.

Jason M. Green,

Chief Advisor,

Office of Medicare Hearings and Appeals.

Billing Code **4152-01**

[FR Doc. 2016-18665 Filed: 8/10/2016 8:45 am; Publication Date: 8/11/2016]